

Cup

CHICAGO, WEST PULLMAN and SOUTHERN RAILROAD COMPANY

3-017AC96

JAN 17 1978

RECEIVED

JAN 17 4 12 PM '78

**OFFICE OF THE PRESIDENT
CERTIFICATION UNIT**

Date 1/17/78

cc \$ 50

cc Washington, D.C.

RECORDATION NO. 9184

JAN 17 1978 - 1 15 PM January 9, 1978

**INTERSTATE COMMERCE COMMISSION
RECEIVED**

Mr. R. L. Oswald
Secretary Congressional Rel. Officer
Interstate Commerce Commission
12th & Constitution Avenue, NW
Washington, DC 20423

JAN 16 1978

**ADMINISTRATIVE SERVICES
F. MAIL BRANCH**

Dear Sir:

Enclosed herewith is original document and two copies of an agreement made and entered into between Alco Spring Industries, Inc. (Lessor) and the Chicago, West Pullman and Southern Railroad Company (Lessee). This agreement covers 50 new 100-ton gondola cars manufactured by Thrall Car Manufacturing Company, Chicago Heights, Illinois. General description attached.

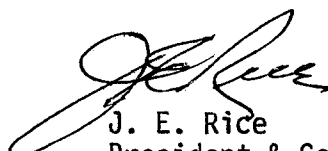
We request that document be recorded as provided under Section 20c of Part I of the Interstate Commerce Commission and that following such recordation, the original document be returned to

J. E. Rice, President & General Manager
Chicago, West Pullman & Southern RR Co.
2728 East 104th Street
Chicago, Illinois 60617

Check for \$50.00 to cover recording fee is attached hereto.

If further information is needed, call me at area code 312, phone 221-0880 or inform by letter as convenient.

Very truly yours,



J. E. Rice
President & General Manager

JER:nb
Enc.

cc: Mr. Wm. Cunningham
Alco Spring Industries, Inc.
Chicago Heights, IL 60411

Initials "CWP" Low number 101 - high number 150 (consecutive)
50 - 100 ton gondola cars - new January, 1978.

Length inside	52'6"
Length over strikers	54'6"
Width inside	9'6"
Width overall	10'4-1/2"
Height inside	5'0"
Height from rail to top of sides	8'6-1/2"
Height from rail to center of coupler	2'10-3/4"
Length over end sills	52'6"
Height from rail to bottom of center sill	2'4-5/8"
Distance from center to center of trucks	43'4-1/2"
Center plate height	2'1-1/16"
Length over pulling face of couplers	57'1-1/2"
Clearance	Plate B
Cubic capacity	2,494 cu. ft.
Est. light weight	61,000#

Curve data - Car with E 60 Cht. coupler

Coupled to like car 211' radius

Coupled to AAR base car 209' radius

Uncoupled 150' radius

AAR Classification GB

Built by Thrall Car Manufacturing Company, P. O. Box 218, Chicago Heights, IL 60411.

Interstate Commerce Commission
Washington, D.C. 20423

1/18/78


OFFICE OF THE SECRETARY

J.E. Rice
Pres. & Gen. Manager
Chicago, West Pullman & Southern R.R.Co.
2728 East 104th Street
Chicago, Illinois 60617

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on **1/17/78** at **1:45pm**,
and assigned recordation number(s) **9184**

Sincerely yours,


H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

AGREEMENT

JAN 17 1978 - 1 45 PM

INTERSTATE COMMERCE COMMISSION

This Agreement made and entered into this 2nd day of July, 1977 by and between Alco Spring Industries, Inc. whose principal office is in Chicago Heights, Illinois, hereinafter called, the Lessor, and Chicago West Pullman & Southern Railroad Co., a corporation located at 2728 E. 104th St., Chicago, Illinois, hereinafter called the Lessee.

W I T N E S S E T H :

1(a) Lessor agrees to furnish to Lessee, and Lessee agrees to accept and use, upon the terms and conditions herein set forth, the following described freight cars (hereinafter referred to as the "cars"; if only one car shall be covered by this Agreement, all plural references to cars shall mean said one car) for use of each of which Lessee agrees to pay Lessor all per diem, incentive per diem, mileage fees, and demurrage, (as collected or remitted to Lessee) earned by the cars to Lessor. These fees shall be referred to as "rental charges".

<u>NUMBER OF CARS</u>	<u>IDENTIFICATION NUMBERS</u>	<u>DESCRIPTION</u>	<u>DATE BEGINNING SERVICE</u>
50	CWP101-150	100 Ton Gondolas GB Class	Date cars are accepted by Lessee

(b) Said rental charges shall become effective with regard to each of the cars upon the date of delivery of each thereof as hereinafter provided in Article 3, and shall continue in effect, with regard to each of the cars until returned to Lessor, upon expiration or termination of this Agreement, as hereinafter provided in Article 6.

(c) Payment of said service charges shall be made promptly to Lessor as received by Lessee. Payment to be made once each month, beginning 45 days after the end of the 1st month the cars are initially placed in service, and then on the 15th day of each month thereafter.

2(a) Payment of \$0.75 per car per calendar day per month shall be made by owner to Lessee and shall not be deducted from the car earnings collected by Lessee. In the event incentive per diem rate is applicable to subject cars, additional payment of \$0.75 per car per day per month shall be made.

(b) Duties and responsibilities of Lessee shall include:

1. Arranging for the maximizing of usage and per diem revenues derived from the cars.

2. When maintenance is required and cars are on Lessee's lines, arrange for maintenance of the cars to maintain their good quality and endeavor to obtain the most economical price available.
3. Provide a monthly report to Lessor of the earnings of the cars showing per diem, incentive per diem, and mileage as reported to Lessee by off-line users.
4. Provide to Lessor reports as required for pertinent tax and accounting requirements.
5. Advise Lessor of any known changes both adverse or beneficial whether physical or legal in nature that could affect the interest of Lessor.

3. DELIVERY OF CAR

Each of the cars shall be considered as delivered to the Lessee upon receiving the cars specified in Article 1(a) hereto, subsequent to a satisfactory report on inspection under Article 4 hereof.

4. CARS SUBJECT TO LESSEE'S INSPECTION

Each of the cars shall be subject to Lessee's inspection upon delivery pursuant to Article 3, and such delivery shall constitute acceptance of each such car by Lessee hereunder and shall be conclusive evidence that each car is of construction and type required by this Agreement and is fit and suitable for transportation.

5. RESPONSIBILITY FOR LOSS OF, DESTRUCTION OF, OR DAMAGE TO CARS

(a) Lessee shall be liable to Lessor for damage to or destruction of a car under any circumstances. If such a car is damaged, but is not destroyed or damaged beyond repair, and such damage was caused or resulted or occurred as provided above in this Article 5, Lessee will pay to Lessor, in accordance with the "Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic," adopted by the Association of American Railroads, Operation and Maintenance Department, Mechanical Division, now in effect and as hereinafter modified. If a car is damaged beyond repair or destroyed, and such damage or destruction was caused or resulted or occurred as provided above in this Article 5, Lessee will pay to Lessor for such car, the value thereof computed according to the Rules of the Association of American Railroads.

(b) Except as otherwise specifically provided for in this Agreement, said rules shall fix, determine, and establish the rights, obligations, and liabilities of Lessee and Lessor in respect to all matters to which said rules relate.

(c) Maintenance expenses shall be paid in accordance with AAR Code of Rules and shall be paid by Lessee. Lessor shall reimburse Lessee for all maintenance expenses paid.

(d) Lessee shall not use nor permit the use of said cars for the transportation and handling of commodities which will injure or damage said cars, while cars are on Lessee's lines.

6. RETURN OF CARS

(a) Lessee agrees, immediately upon the termination or expiration of the term of this Agreement, unless extended or modified, at its own cost, to return the cars to Lessor at such point or points as Lessor shall designate, f.o.b. such point, free from residue, and free and clear of any and all liens and encumbrances whatsoever. Delivery point not to exceed 100 miles from interchange points of Lessee.

(b) Lessee further agrees to give Lessor written notice reasonably in advance of such return.

(c) Each such car so returned shall be in the same condition, ordinary wear and tear excepted, as when furnished by Lessee hereunder, provided the maintenance expenditures referred to in Article 7 below, are permitted by Lessor.

7. MAINTENANCE

Lessee shall maintain the cars and maintenance expenditures shall be governed according to the "Code of Rules Governing the Conditions and Repairs to Freight and Passenger Cars for the Interchange of Traffic" adopted by the Association of American Railroads, Operation and Maintenance Department, Mechanical Division, now in effect and as hereinafter modified; provided, Lessor permits expenditures for such under the Agreement.

8. SUBSTITUTION OF CAR

(a) In the event any car shall be (a) so damaged or in need of repair that Lessor deems it uneconomical to repair the same, or (b) damaged beyond

repair, or (c) destroyed, or (d) lost, Lessor shall have the right, but shall not be obligated, to substitute another car therefor.

(b) Should Lessor elect not to replace said damaged, destroyed or lost cars, the Agreement shall terminate as to such cars but shall continue as to the remaining cars.

9. REPORTS AND CAR HIRE EARNINGS

(a) Lessee shall be responsible for the collection of all car hire earnings earned by the cars while the cars shall be in the Lessee's service hereunder, and shall make payment in accord with this Agreement.

(b) All car hire collections, the aggregate of the normal per diem and mileage revenues and demurrage, and incentive per diem are payable by the Lessee to Lessor.

10. LETTERING OF CARS

Lessee shall have the right to place such of its permanent lettering or markings upon the cars as are necessary to implement this Agreement subject to Lessor's prior written consent and Lessee shall not without such consent board, placard or stencil the cars with any other letters or markings. Lessor shall have the right to place such lettering or markings upon the cars as are designated or requested by Lessor or as required and permissible under governmental regulatory agencies.

11. RESPONSIBILITY FOR TAXES

Lessor agrees to assume responsibility for, and to pay, all property taxes levied upon the cars within the United States of America, and Lessee shall prepare and file all property tax reports relating thereto, subject to the prior written approval of Lessor.

12. RESPONSIBILITY FOR LOSS OR DAMAGE TO LADING OR OTHER PROPERTY:
RESPONSIBILITY FOR PERSONAL INJURY; INDEMNITY

(a) Lessor shall not be liable under any circumstances for any loss of, destruction of, delay of, or damage to all or any part of any lading, loaded or shipped in or on any of the cars, however such loss, destruction, delay or damage shall be caused, or shall result. Nor shall Lessor be liable to Lessee because of or on account of any damage or injury caused directly or indirectly by any of the cars, or resulting in any way from the use thereof.

(b) Lessee agrees to fully indemnify Lessor and hold Lessor harmless of and from all claims, demands, or causes of action including but not limited to those referred to in Article 12(a) above asserted against Lessor by any other person, firm, or corporation on account of any damage or injury caused directly or indirectly by any of the cars or resulting in any way from the use thereof, and to defend at Lessee's expense any litigation arising incidental to the operation of said car.

(c) Lessee agrees as part of the consideration of this Agreement, to forever indemnify Lessor against and save Lessor and its successors and assigns harmless from claims relating to injuries or fatalities to persons arising in any manner out of any use, possession or operation of the cars, except while the car is designated in writing for special use by Lessor.

13. USE OF CARS

Lessee, and any of its subsidiaries, shall have the right to use the cars exclusively within the continental limits of the United States of America.

14. Lessee shall use best efforts to maximize mileage for the benefit of Lessor.

15. Any demurrage or destination charge imposed by applicable government or A.R.R. rules or regulations and any track storage charge imposed in connection with any car covered by this Agreement shall be the liability of Lessee or consignee (shipper) unless Lessor has failed to pay maintenance or capital improvement costs promptly. Lessee's tracks shall be considered home tracks for the cars covered by this Agreement and Lessor shall have the use thereof of such tracks without charge.

16. Lessee shall exert its best efforts to have using shippers and railroads clean the cars at their expense.

17. TERMINATION

(a) Lessor shall have the right to terminate this Agreement by giving not less than six (6) months prior written notice to Lessee of its intention to do so.

1. If Lessor terminates this Agreement, Lessee shall be entitled to receive any and all management fees due and owing to Lessee as of the date of termination.

(b) Lessor shall have the right of immediate termination of this Agreement under the following conditions:

1. In the event daily utilization of the group of cars identified in this Agreement falls below 75% utilization during any consecutive six (6) month period.
2. Sale by Lessor of the cars.

(c) Lessee shall have the right of immediate termination of this Agreement, if found not in compliance with governmental regulatory bodies, or if interstate commerce commission shall at any time determine Lessee may not use incentive and/or per diem funds for rental payments herein described.

18. TERM

Subject to Article 17 hereof, this Agreement is to continue for a term of twelve (12) years or for such longer period as the contract is in effect, starting from date any new cars are placed in service as shown in Article 1A.

19. INSURANCE

Lessee shall maintain such insurance on the cars as is normal and customary in the industry and such insurance as may be requested by Lessor. Premium payments to be paid by Lessor must be approved by Lessor in writing prior to insurance policy commitment. Lessee agrees to notify Lessor of the nature, scope, limits and costs of the aforesaid insurance and Lessee agrees to maintain such additional insurance as may be requested or required by Lessor from time to time.

20. COLLATERAL

Lessee shall not utilize the cars as collateral nor perform or permit any lien or encumbrance of whatever nature or take or permit any action to be taken which would or could in any way affect the clear title or interest of Lessor in said cars except any liens arising from failure by Lessor to pay for maintenance expenses and capital improvement costs approved by Lessor.

21. AMENDMENT

This Agreement may be modified in writing upon mutual consent of the parties.

22. NOTICES, ASSIGNMENTS AND ENFORCEMENT

Notices may be given in writing addressed to the recipient at the address for the Lessee: 2728 E. 104th St., Chicago, Illinois and at the following address for the Lessor: 23rd Street and Euclid, Chicago Heights, Illinois 60411.

Because of the necessity of dependable performance by the parties hereto of their respective undertakings, neither party may assign its rights or obligations hereunder to any other person or party except with a written consent of the other party not unreasonably withheld.

This Agreement is binding upon and for the benefit of the respective parties and to the extent permitted to their respective assignees. In the event an action is taken to enforce the terms hereof, the prevailing party shall be entitled to recover the expense of such action, including attorneys fees therefor.

23. ARBITRATION

The parties hereto agree that in the event of any dispute between said parties, excepting matters involving payment of monies by Lessee to Lessor, that such disputes shall be submitted to and resolved by arbitration. Each party shall designate one arbitrator and the two arbitrators so designated shall in turn designate a third mutually acceptable arbitrator. Such arbitration shall be conducted pursuant to the American Arbitration Association and the parties hereto agree to be bound by the results thereof.

24. GOVERNING LAWS

This Agreement is to be interpreted under the laws of the State of Illinois the Interstate Commerce Act and the Rules and Regulations of the Interstate Commerce Commission and Association of American Railroads.

IN WITNESS WHEREOF, the parties hereby affix their signatures and seals this 2 day of JULY, 1977.

ALCO SPRING INDUSTRIES, INC.

By W. A. Cunningham
President

ATTEST: Robert P. Keenan
Secretary

CHICAGO, WEST PULLMAN & SOUTHERN R.R. CO.

By W. H. Rice
President

ATTEST: R. H. Loebe
Secretary